Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996:	)	
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other	)	
Customer Information	)	

COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC"), on behalf of itself and each of its subsidiaries, hereby files these comments in response to the Further Notice of Proposed Rulemaking ("FNPRM") issued on February 26, 1998 in this proceeding. The FNPRM was issued in conjunction with the Commission's Order regarding Customer Proprietary Network Information ("CPNI").[1] In the FNPRM, the Commission seeks comment on whether, under Section 222 of the Act, customers have a right to restrict all marketing uses of CPNI.[2]

I. SUMMARY

The Commission should conclude that Section 222 does not confer any right upon consumers to restrict carrier use of CPNI for all marketing purposes, including those within the

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[1]Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Second Report and Order ("CPNI Order") and Further Notice of Proposed Rulemaking, FCC 98-27, released February 26, 1998.

[2]FNPRM, ¶205.

carrier-customer "total service" relationship. Neither the careful balance struck by Congress between the rights of customers and the rights of carriers, nor customers' own expectations and desires, would justify the Commission's adoption of any rules that would permit such a restriction.

These considerations require that the Commission conclude that Section 222(c)(1) confers upon carriers the unconditional right to use CPNI within the customer-carrier total service relationship. Congress deliberately decided to confer this unqualified right upon carriers. Moreover, Congress' decision is entirely consistent with consumers' expectations and desires, and findings the Commission has already made in these regards in its CPNI Order. Indeed, any Commission conclusion to the contrary would place it squarely at odds with the foundation of its own CPNI Order.

Finally, regardless of the Commission's consideration of the relative points that may be made by commenters in this proceeding, principles of comity favor allowing Congress, not the Commission, to make the choice as to whether any rights in addition to or different than those in Section 222 should be enacted into law.

II. IN ENACTING SECTION 222, CONGRESS INTENDED THAT CARRIERS HAVE AN UNCONDITIONAL RIGHT TO USE, DISCLOSE, AND PERMIT ACCESS TO CPNI IN SUPPORT OF THE CUSTOMER-CARRIER TOTAL SERVICE RELATIONSHIP.

There is no indication that Congress intended to confer upon consumers any "right" of the sort now being considered by the Commission. To the contrary, every indication is that

Congress intended to confer upon carriers an unqualified right to use, disclose, and permit access to CPNI for certain marketing purposes, irrespective of customer approval.

Importantly, the Commission fairly concedes that Section 222(c)(1) does not expressly state that a customer has a right to restrict a telecommunications carrier from using, disclosing, or permitting access to CPNI within the circumstances defined by subsections (c)(1)(A) or (c)(1)(B).[3] Nor does the statutory language permit any inference that Congress intended to confer such a right. Rather, key statutory language demonstrates Congress' having made the "deliberate decision"[4] to strike a balance between the rights of both customers and carriers.

Section 222(c)(2) reflects the allowance of customer control over the circumstances in which a third party may obtain the CPNI of a carrier's customer.[5] That control mechanism is an "affirmative written request" made by the customer. Section 222(c)(1) reflects the allowance of customer control over certain uses of CPNI by the customer's carrier. As the Commission stated in its CPNI Order, subsection (c)(1) represents Congress' determination that customers should have the right "to control any 'secondary' uses to which carriers could make use of their CPNI, and thereby restrict [its] dissemination."[6] That control mechanism is the "approval" of the

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[3] Id., ¶204 ("Section 222, however, is silent on whether a customer has a right to restrict a telecommunications carrier from using, disclosing, or permitting access to CPNI within the circumstances defined by subsections 222(c)(1)(A) and (B).") (emphasis added).

[4] Id., ¶32.

[5] Id., ¶53.

[6] Id.

customer. Finally, each of clauses (A) and (B) within Section 222(c)(1) reflects the circumstances in which Congress chose "[to] permit carrier use of CPNI absent customer approval."[7] Put another way, each of these clauses constitutes an "exception"[8] which confers upon carriers the right to use CPNI without any condition whatsoever, in the circumstances that the Commission refers to as the "total service approach."

Thus, Congress struck a purposeful balance between those uses of CPNI over which the customer should have control, and other uses of CPNI over which the customer should not have any control. The CPNI Order expressly recognized this balance, when it confirmed its view that "in [S]ection 222 Congress intended neither to allow carriers unlimited use of CPNI for marketing purposes. . . , nor to restrict carrier use of CPNI for marketing purposes altogether."[9]

Had Congress intended a different result, the text of Section 222(c)(1) "could have been drafted more simply."[10] For example, Congress could have stated in straightforward fashion that "no use, access to, or disclosure of CPNI, for the purpose of marketing any service, is permissible absent customer approval." Of course, the words of the statute bear no resemblance to such a sweeping prohibition. That is because Congress deliberately chose a careful and

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[7] Id.

[8] Id., ¶36.

[9] Id., ¶37.

[10] Id., ¶33.

balanced approach. That approach is directly contrary to the notion of unfettered and complete customer control which is implicit in the question raised by the Commission's FNPRM.

III. UNLIMITED CUSTOMER CONTROL TO RESTRICT ALL MARKETING USES OF CPNI IS NEITHER EXPECTED NOR DESIRED BY CONSUMERS, AND IS UNNECESSARY GIVEN THEIR "DO-NOT-CALL" RIGHTS.

The Commission has already determined that "the total service approach maximizes both customer control and convenience."[11] Having done so, it cannot now reasonably (much less logically) justify additional or different measures which would "even more" maximize customers' control and convenience. In any case, the FNPRM offers no justification for such measures in light of this previous determination, and certainly none that would account for customers' own expectations and desires relative to the marketing uses to which carriers may put their CPNI.

The plain fact is that, in its CPNI Order, the Commission found that "customers expect that carriers with which they maintain an established relationship will use information derived through the course of that relationship to improve the customer's existing service."[12] The FNPRM inexplicably fails to acknowledge this finding. Providing customers with a new "right" to restrict all marketing uses of CPNI would fail to recognize this important and entirely legitimate expectation. Nor does the FNPRM explain how such a new right would help a carrier to better improve its customers' existing service than the carrier's right to use CPNI within the

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[11] Id., ¶56 (emphasis added).

[12] Id., ¶54.

total service approach already established by Section 222 and the CPNI Order. No rational explanation exists.

Similarly, customers have not expressed any desire to control all possible marketing uses of their CPNI, probably for the same reason that there is "no reason to believe that customers would expect or desire their carrier to maintain internal divisions among the different components of their service."[13] Such measures would be inimical to the timely, responsive and complete service that customers demand -- the kind of service that only use of CPNI within the existing total service relationship can best provide.

To the extent that the Commission's intent is to allow customer control over carrier marketing activities directed to them, the Commission need not engage in but more regulation of CPNI to achieve that end. Existing tools made possible by telephone consumer protection laws already allow any consumer to stop solicitation calls made to them. Most important among them are the various "do-not-call" regulations, under which telemarketers are required to respect a consumer's desire to be left alone.[14]

Additional CPNI rules whose effect would only further compromise a carrier's ability to provide better customer service and new service offerings (while also imposing but more unnecessary and burdensome regulatory compliance measures) should not be considered. This is

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[13] Id., ¶55.

[14] 47 C.F.R. §64.1200.

particularly so absent a compelling showing both that existing do-not-call regulations have proven inadequate and that additional CPNI protections would best meet that inadequacy.

IV. AS A MATTER OF COMITY, THE COMMISSION SHOULD DEFER TO CONGRESS REGARDING WHETHER CUSTOMERS SHOULD BECOME ENTITLED TO RESTRICTING ALL USES OF CPNI FOR MARKETING PURPOSES, EVEN WITHIN THE EXISTING TOTAL SERVICE RELATIONSHIP.

As a matter of comity, if nothing else, the Commission should not seek to legislate a new CPNI right in the particular circumstances of this proceeding. It should be recalled that nowhere in Section 222 did the Congress call for the Commission to engage in any rulemaking on any aspect of CPNI. Nevertheless, in response to "various informal requests for guidance,"[15] the Commission two years ago launched a rulemaking proceeding, ostensibly to "specify in more detail and clarify the obligations of telecommunications carriers" under the statute.[16] Notwithstanding this seemingly limited task, the proceeding resulted in an Order going beyond merely specifying and clarifying duties (by, among other things, imposing a series of exacting "notification" requirements and multiple "safeguards" to ensure compliance).

In this particular FNPRM, the initial facts are the same. The statute still does not direct nor contemplate a rulemaking. However, two facts appear to be present here that were not present when the Commission issued its 1996 NPRM. First, to SBC's knowledge, no one has

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[15] Id., ¶6, n. 25.

[16] Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Notice of Proposed Rulemaking, 11 FCC Rcd 12513 (1996), ¶1.

asked the Commission for guidance as to "whether customers have a right to restrict all marketing uses of CPNI." Second, the Commission's FNPRM reveals few earmarks of an outcome that will "clarify" the law. To the contrary, the question posed smacks of a clear intention to legislate.

Just because the Commission finds that Section 222 is "silent" about whether a customer has such a right does not necessarily provide it license to create that right. Instead, the relative wisdom of such a precipitous action, that may be reflected in the pros and cons advanced by consumers, the telecommunications industry, and others, should be put to Congress. This is particularly so given that Congress, had it cared to do so in 1996, could have chosen to grant customers the right to disallow use of their CPNI even where the carrier's purpose would be to enhance the carrier's total service relationship with its customer. The Commission should defer to Congress on the matter of whether the statute should so state, and not treat the lack of an "express" reference as Commission authority to legislate one for itself.

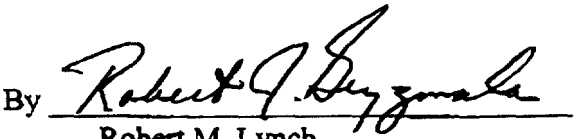
V. CONCLUSION

For the foregoing reasons, the Commission should decline to further consider the question of whether it should upset Congress' careful balance between the rights of both

customers and carriers, as well as the expectations and desires of customers. Even if these considerations do not so require, comity nonetheless suggests that Congress, not the Commission, should consider the matter.

Respectfully submitted,

SBC COMMUNICATIONS INC.

By 

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March 30, 1998

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "COMMENTS OF SBC COMMUNICATIONS INC." in CC Docket No. 96-115 has been filed this 30th day of March, 1998 to the Parties of Record.

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